

CHAPTER 17
BARGE FLEETING REGULATIONS
[Prior to 12/31/86, Conservation Commission[290] Ch 54]

571—17.1(461A) Applicability. This rule is applicable to all waters under the jurisdiction of the commission except that portion of the Mississippi River conveyed to certain cities by chapter 249, Acts of the Fifty-first General Assembly; chapter 299, Acts of the Fifty-ninth General Assembly or Special Charters enacted by the legislature in 1856 and 1857.

571—17.2(461A) Fleeting operations. No person shall assert any exclusive privilege to conduct barge mooring service for hire, or not for hire, and prevent or obstruct any lawful use of public waters except within a fleeting area authorized by the department of natural resources, or at a loading or off-loading facility constructed under appropriate permits and necessary to carry on commerce.

571—17.3(461A) General. The following requirements shall apply to all fleeting areas designated or constructed under permit from the department of natural resources.

17.3(1) “Fleeting area” means an area within defined boundaries used to provide barge mooring service and to accommodate ancillary harbor towing under care of a fleet operator. The term does not include momentary anchoring or tying off of tows in transit and under care of the line haul towboat.

17.3(2) The duration of a fleeting area permit shall not be more than five years. Permits may be renewed for a period of five years where a continuing need exists unless a person aggrieved or adversely affected shows cause why the permit should not be renewed. A decision not to renew shall be made only after notice and opportunity for a hearing. During the time specified in 571—17.13(461A) the fleet operator must submit an application for a new permit. Renewal shall be subject to 571—Chapter 17 as it exists at that time.

17.3(3) A fleeting permit shall be construed to do no more than give the permittee the right to designate and improve an area to be utilized for fleeting. The permit creates no interest, personal or real, in the real estate below the ordinary high water line except as provided in 17.10(461A).

17.3(4) Improvements permitted in designated fleeting areas shall be limited to items such as construction of dolphins, mooring piling, deadmen anchors, sunken barge anchors, and other similar methods of assuring retention of barges in the designated area.

17.3(5) The fleeting activities allowed in the area designated for the fleeting of barges shall be limited to barge mooring service, ancillary harbor towing and minor barge repair or servicing. No washing or cleaning of barges is permitted in such areas, unless conducted in a manner to meet the requirements of Iowa Code chapter 455B and the cleaning activity is specifically approved by the department of natural resources.

17.3(6) Fleeting area permits are not transferable without written approval of the department of natural resources.

17.3(7) Barges shall not be moored to trees or other natural features of an area except with the approval of the riparian property owner or during an emergency.

17.3(8) Designated fleeting areas may be used for recreational pursuits such as boating and fishing only to the extent that such use does not interfere with fleeting activities. No person shall obstruct use of a designated fleeting area except with permission of the permittee.

17.3(9) The permittee shall, at all times, be responsible for the safety and security of the barges in the fleeting area and shall take reasonable precautions to eliminate hazards to boaters or other persons in the fleeting area.

17.3(10) Moored or fleeted barges shall be marked by such lights or other warning devices as may be required by state or federal regulations.

17.3(11) The department of natural resources permit shall be issued subject to all other permits which may be required by any governmental agency having jurisdiction in the area.

17.3(12) The permittee shall notify the department of natural resources of the current name, address, and day and night telephone numbers of the person directly responsible for supervising the fleeting area to be notified in case of emergency.

571—17.4(461A) Riparian rights. No fleeting area shall be placed in a location that would interfere with the rights and privileges of the riparian property owner without written permission of the riparian owner or lack of response to the notice provided for in 17.7(2)“j.”

571—17.5(461A) Prohibited areas. Permits shall not be issued for fleeting areas in the following locations:

17.5(1) Immediately adjacent to or over a dam, sill, lock, breakwater, revetment, navigation aid, or wing dam.

17.5(2) Within established navigation channels for commercial or recreational vessels.

17.5(3) Within the approach area for a lock portion of a dam structure.

17.5(4) Adjacent to bridge structures or vessel approach areas to bridges.

571—17.6(461A) Restricted areas. Permits shall not be issued for fleeting areas in the following locations unless the department of natural resources determines there is a compelling reason for fleeting in such an area and there is no other feasible site.

17.6(1) An area which would have a substantial adverse affect on fish or wildlife (water-fowl or furbearer) habitat due to dredging, propeller wash or other activity related to fleeting.

17.6(2) Locations subject to unusual hazards including but not limited to high wind, strong current, violent ice movement, and hydraulic surges during the time fleeting operations are proposed to be carried out.

17.6(3) Locations receiving high use for recreation, sport fishing, and commercial fishing unless the fleeting area can be placed or structured to be compatible with such uses.

17.6(4) Locations immediately adjacent to industries or other facilities which together with fleeting operations present a substantial risk of fire, explosion, water pollution, or other serious safety hazards.

17.6(5) An area in which barge fleeting activities would restrict or interfere with or have a substantial adverse effect on the use and enjoyment of an area owned by federal, state, or local government, including but not limited to public parks, game refuges, forests, or recreation areas used for access to docks, slips, harbors, marinas, boat launching ramps or the unique biological or physical features of the river valley itself.

571—17.7(461A) Applicant—content of application.

17.7(1) Applicant. The applicant for a fleeting area permit must be the shoreline-based industry(ies) or the fleeting company(ies) which will use the services of the barge fleeting area.

17.7(2) Content of application. The following information shall be stated in an application for fleeting area permit.

- a. Name, address, and telephone number of applicant.
- b. Location of proposed fleeting area, including a map or drawing showing its relation to major identifiable features in the immediate area (river mile, adjacent structures, etc.).
- c. Name of river and channel, slough or chute if applicable.
- d. Section, township, range, and county.
- e. Name(s), address(es), and telephone number(s) of owner(s) of land adjacent to river (riparian) in front of whose property the fleeting area will be constructed.
- f. Sketch of proposed area (to scale) with dimensions and location in relation to shoreland property lines and placement of improvements within the area and configuration of the maximum number of barges to be moored.
- g. Sketch showing proposed area (to scale both vertical and horizontal) in relation to pertinent topographic, hydrographic, and cultural features, current flow and relation to the compass direction north.
- h. Sketch (to scale) showing the following features for a distance of one-fourth mile above and below the proposed fleeting area: bridges, lock and dam structures, wing dams, navigational aids, docks (public and private), residential areas, recreational areas and other publicly owned property, other fleeting areas, islands, left and right buoyed channel lines, power or utility lines (above ground and buried), and boat marinas or harbors.
- i. Barge fleeting facilities shall be constructed in a manner consistent with engineering standards of the U.S. Army Corps of Engineers.
- j. Written permission of owners of riparian property adjacent to the area if other than the applicant.

In lieu of written permission, the applicant shall certify that he has notified the riparian owners of the proposed establishment of a fleeting area. Notification to riparian property owners shall be on forms furnished by the department of natural resources. The riparian property owner shall notify the department of natural resources within 30 days of receipt of notice if the owner objects to the issuance of a permit. The department of natural resources shall consider the effects of permit issuance on the riparian property owner's rights.

- k. Signature of applicant or authorized agent.
- l. Documentation of the need for the size, capacity, and location of the fleeting area for which a new or renewal permit is requested.

571—17.8(461A) Notices and opportunity for hearing.

17.8(1) Notice of receipt of application. Upon receipt of an application which complies with the requirements of 17.7(461A) of these rules, the department of natural resources staff shall give notice of receipt of the application as follows:

a. Publication of notice. The department of natural resources staff shall publish one notice in a newspaper as defined in Iowa Code section 618.3 published in the county where the proposed fleeting area is located or in an adjacent county. The newspaper shall be of general circulation in the vicinity of the proposed fleeting site. The notice shall briefly describe the location and nature of the proposed fleeting area, identify the department of natural resources rules which are pertinent to the application, state whether the application is a new or renewal, and provide that a hearing will be scheduled if the department of natural resources director determines that there is a material issue concerning whether the application complies with applicable criteria in these rules. The notice shall allow interested persons 30 days from the date of publication to submit comments or a request for hearing, and shall state that a request for hearing must be supported by documentation of potential adverse effects of the proposed fleeting facility on an affected or aggrieved person.

b. Notification of governmental bodies and interested persons. The notice as prepared for publication shall also be sent by first class ordinary mail or an equivalent method of service to the directors of the Iowa department of transportation, Iowa department of economic development, the Iowa secretary of agriculture, the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, U.S. Coast Guard, natural resources and transportation management agencies of the adjacent state, and to any person who has requested in writing that the person’s name be placed on a mailing list for notification of barge fleeting facility applications adjacent to a designated county or counties. The mailing list will be updated at the beginning of each calendar year, requests to remain thereon shall be current.

17.8(2) Hearing. Upon determining that there is a material issue concerning whether an application for a fleeting facility permit satisfies the applicable criteria in these rules the Iowa department of natural resources director shall cause a contested case proceeding to be commenced in accordance with natural resource commission rules 571—Chapter 7. Notice of the hearing shall be sent to the governmental agencies listed in 17.8(1)“b” of these rules and to any person who has requested a hearing on the application.

571—17.9(461A) Application review. Applications will be reviewed by the commission staff, in consultation with other state and federal agencies as necessary, to determine the potential impacts on the natural conditions, shoreland uses, and other public water uses.

571—17.10(461A) Lease. The permit issued by the department of natural resources shall constitute a lease under Iowa Code section 461A.25 of the state property involved. The following table shall be used to determine the annual permit and lease fee to be paid by the permittee to the department of natural resources. The fee is based on the dimensions of the area to be used as a fleeting area.

FRONTAGE

Depth	50'	100'	150'	200'	250'	300'	350'	400'	450'	500'	550'	600'	650'	700'	750'	800'
100'	\$125	250	375	500	625	750	875	1000	1125	1250	1375	1500	1625	1750	1875	2000
200'	\$219	438	657	875	1094	1313	1532	1750	1969	2188	2407	2625	2844	3063	3282	3500
300'	\$282	563	844	1125	1407	1688	1969	2250	2532	2813	3094	3375	3657	3938	4219	4500
400'	\$313	625	938	1250	1563	1875	2188	2500	2813	3125	3438	3750	4063	4375	4688	5000

When the area leased is larger than that designated by this table, the fee for each additional segment of 50'×100' or any portion thereof shall be determined as follows:

A. The fee for increased depth shall be at the rate of \$50 per segment (50'×100') or any portion thereof.

B. The fee for additional frontage shall be proportionate to that indicated on the table.

C. When a fleeting area is located totally adjacent to privately-owned riparian property and anchoring system is above the ordinary high-water line, the fee for each segment (50'×100') or portion thereof on areas in excess of the first 1,000' of frontage shall be one-half that for a like segment on areas with up to 1,000' of frontage.

D. The reduced fee referred to in "C" is not applicable for fleeting areas located adjacent to the riparian property under public ownership or when the anchoring system is located below the ordinary high-water line.

"Frontage" is the dimension parallel to the river's flow or along the shoreline. "Depth" is the width crosscurrent or perpendicular to the shoreline.

These fees may be adjusted every five years and all existing leases are subject to such adjustments.

571—17.11(461A) Nonuse. Evidence of limited or nonuse of a fleeting area shall be cause for review by the department of natural resources in consultation with other state and federal agencies and may be cause for reduction in size or termination of a fleeting permit. The permittee may request a contested case proceeding in accordance with Iowa Code chapter 17A and natural resource commission rules 571—Chapter 7.

571—17.12(461A) Reports of use. The permittee shall submit annual reports of the average daily number of barges moored during the preceding year. These reports are to be received by the department of natural resources no later than the thirty-first day of January each year.

571—17.13(461A) Renewals. The permittee shall request renewal of the permit not more than six nor less than two months prior to its expiration. Failure to request renewal shall terminate the permittee's rights to the fleeting area.

571—17.14(461A) Permit and lease revocation. A fleeting area permit and lease may be revoked upon determination that operation of the facility is in violation of a condition of the permit. Revocation proceedings shall be in compliance with Iowa Code chapter 17A and natural resource commission rules 571—Chapter 7.

571—17.15(461A) Severability. Should any section, paragraph, phrase, sentence, or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

These rules are intended to implement Iowa Code sections 461A.4, 461A.25, and 462A.32.

[Filed 9/4/81, Notices 3/4/81, 5/27/81—published 9/30/81, effective 11/5/81*]

[Filed without Notice 12/12/86—published 12/31/86, effective 2/4/87]

[Filed 6/27/97, Notice 4/9/97—published 7/16/97, effective 8/20/97]

*Effective date of 290—Ch 54 delayed by the Administrative Rules Review Committee 45 days after convening of the next General Assembly pursuant to §17A.8(9). [Published 10/28/81].